UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

UNITED STATES OF AMERICA	***)***	
	)	
v.	***)***	***Criminal No. 01-37-P-H***
	)	
JOSHUA WALTERS a/k/a	***)***	
JOSHUA WALTER,	***)***	
	)	
Defendant	***)***	

RECOMMENDED DECISION ON MOTION TO SUPPRESS

Joshua Walters, charged with being a felon in possession of a firearm (a Jennings Model J25 .25 caliber pistol) in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2), seeks to suppress an alleged involuntary confession as well as statements and tangible objects purportedly obtained in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966). Indictment (Docket No. 1); Motion To Suppress Tangible and Derivative Evidence and Statements, Admissions and Confessions ("Motion") (Docket No. 5). An evidentiary hearing was held before me on August 15, 2001 at which the defendant appeared with counsel.[1] The government called three witnesses, Brian Rose, Eric Syphers and James Theiss, and introduced five exhibits, which were admitted without objection. Defense counsel sought and was afforded an opportunity to submit a post-hearing memorandum, to which counsel for the government was invited to respond. No post-hearing briefs were filed within the allotted time. Based on the

[1] At the hearing defense counsel withdrew a companion Motion To Suppress Identification (Docket No. 4). Transcript of Hearing *in*

evidence adduced at the hearing, I recommend that the following findings of fact be adopted and that the motion to suppress be denied.

I. Proposed Findings of Fact

On the evening of April 14, 2001 at approximately 11:15 p.m. Brian Rose, a patrolman with the Lewiston Police Department ("LPD"), was driving his cruiser alone along Canal Street Alley (the "Alley") in Lewiston when he heard a noise that sounded like gunshots or firecrackers as he passed behind an establishment known as the "Big D." Transcript at 5-6. He stopped his car, jumped out, drew his gun and stood behind the driver's side door. *Id*. at 16, 18. He then observed a black male wearing dark clothing and a backwards-placed hat (whom he identified as the defendant) walking from the Alley in the direction of Cedar Street. *Id*. at 6, 12, 18. He ordered the defendant at gunpoint to stop and put his hands in the air. *Id*. at 6-7. Initially the defendant complied. *Id*. at 7. Rose recalled the defendant saying, "It was Justin," although Rose at the time had no idea what this meant. *Id*. Rose said something to the effect, "What are you doing? Are you letting off fireworks?" *Id*. at 7-8, 26. The defendant replied: "Yeah, it was Justin setting off fireworks." *Id*. at 8. Rose then commanded the defendant to let Rose see his hands and to get on the ground; the defendant did not do so. *Id*. The defendant took a few steps forward, then began backing away, then starting walking back toward the Alley. *Id*.

Rose, with weapon still drawn, followed the defendant into the Alley, commanding: "[S]top or I'll shoot!" and ordering him to raise his hands. *Id*. at 8-9. The defendant raised his hands, then took off running toward Lisbon Street. *Id*. at 9; *see also* Gov't Exh. 1 (aerial photograph of scene). Rose radioed the LPD that shots possibly had been fired and that he was in pursuit of a black male. Transcript at 6. He then pursued the defendant, yelling repeatedly, "[S]top or I'll shoot! Let me see

---

re Defendant's Motion To Suppress ("Transcript") (Docket No. 14) at 3-4.

your hands!" *Id*. at 9-10. He chased the defendant down Lisbon Street and onto Cedar Street, over the bridge spanning the canal. *Id*.; *see also* Gov't Exh. 1. On the bridge the defendant suddenly crossed to the other side of the street and started walking. Transcript at 10. Rose continued to order him to stop. *Id*. At approximately this time Eric Syphers, another LPD officer, arrived at the scene, blocked both lanes of traffic with his cruiser and got out of the car. *Id*. at 11, 29, 34-35. Syphers also drew his gun and began ordering the defendant to get on the ground. *Id*. at 35-36. The defendant, who was positioned between the officers, continued to walk for eight or ten steps as the officers repeatedly ordered him to get down, then lay down on his back with his hands behind his back. *Id*. at 11, 35-37. The officers ordered him to turn onto his stomach. *Id*. at 36-37. He did not do so. *Id*. The officers then forcibly turned him and placed his hands behind his back, with Rose administering a "softening blow" – one punch to the defendant's right side – to facilitate compliance. *Id*. at 11, 24. The officers then cuffed the defendant's hands behind his back and stood him up. *Id*. at 11, 14. Rose performed a quick pat-down search and found nothing on the defendant. *Id*. at 14. Rose heard someone – mostly likely a fellow police officer – yell, "Where's the gun at?" *Id*. at 14, 22, 27-28. The defendant, to whom this question was not directly addressed, responded: "It wasn't a gun. It was a beer bottle." *Id.* at 15, 22, 27-28. Rose also may have responded, "I don't know." *Id*. at 28.

During this entire time Rose, who was perhaps fifteen to twenty feet behind the defendant while pursuing him, saw nothing in the defendant's hands and did not see the defendant throw anything. *Id*. at 9, 14, 21. Rose observed no one else in the Alley during the time he was there. *Id*. at 19. Neither Rose nor any other officer read the defendant his *Miranda* rights at the scene of arrest. *Id*. at 21.

Syphers placed the defendant, still handcuffed, in the back of his cruiser and drove him to the LPD station. *Id*. at 38. Syphers, who did not recall speaking with the defendant during the short drive,

did not at any point administer a *Miranda* warning to him. *Id*. at 39-40. At the police station Syphers escorted the defendant to a Criminal Investigation Division ("CID") interview room, where he waited with him for twenty to thirty minutes. *Id*. at 30-31. During this time the defendant told Syphers that he had asthma, was having difficulty breathing and did not have his inhaler with him. *Id*. at 31-32. The defendant vomited, and Syphers noticed an odor of intoxicating beverages. *Id*. at 32. Syphers asked the defendant if he had been drinking, and the defendant admitted that he had been. *Id*. The LPD arranged for an ambulance and directed that the defendant be taken to St. Mary's Hospital to avoid contact with one Justin Bearfield, whom the LPD had learned was being treated at Central Maine Medical Center ("CMMC") for gunshot wounds. *Id*. at 23, 32-33, 44. Syphers accompanied the defendant to St. Mary's, where he observed the defendant had no difficulty answering questions asked by medical personnel. *Id*. at 33. St. Mary's records reflect that the defendant was X-rayed, given a provisional diagnosis of chest-wall pain with a question of intercostal strain, given Tylenol and Ibuprofen and cleared to return to jail. *See* Gov't Exh. 2 (St. Mary's Regional Medical Center Emergency Department Report). He was noted to have "verbalized understanding" of discharge instructions. *See id*.

At approximately midnight on April 14th Detective James Theiss of the LPD received a call at home from the station. Transcript at 42. He went to the vicinity of the "Big D," where a search for evidence was under way, and was informed by Detective David Chick that officers had recovered bullet casings and had observed bullet holes in cars parked in the Alley. *Id*. at 42-44. Theiss then went to CMMC, where he encountered Bearfield as the latter was leaving the hospital after having been discharged. *Id*. at 44. Bearfield, who confirmed that he had been shot twice, stated that he wished to speak with friends and then would go to the police station. *Id*. at 44-45.

Theiss returned to the station and met with the defendant (who by then had returned from the

hospital) in a windowless ten-foot by ten-foot CID interview room furnished with a single table and two chairs. *Id*. at 46. Theiss introduced himself, explained to the defendant (who was handcuffed) that he was under arrest for failure to submit to arrest, and read the defendant his *Miranda* rights from a standard card. *Id*. at 47; *see also* Gov't Exh. 3 (copy of signed Miranda Warning dated April 15, 2001 at 2:09). Theiss read verbatim from the card, asking the defendant after explaining each of five rights whether the defendant understood it. *Id*. Theiss noted that the defendant replied "yes" each time. *See* Gov't Exh. 3. In response to the question, "Do you wish to answer questions at this time?" the defendant replied, "don't care," Transcript at 48; *see also* Gov't Exh. 3, which Theiss construed to mean that he wished to proceed, Transcript at 48. The defendant and Theiss both signed the *Miranda* warning card, which was dated April 15, 2001 at 2:09 a.m. Transcript at 48-49; *see also* Gov't Exh. 3.

Theiss, joined by Chick, interviewed the defendant for approximately twenty minutes. *Id*. at 46-47, 59. Theiss was aware that the defendant had consumed alcohol, that he had been "taken down," punched or kicked by an officer and handcuffed after a chase, that he had vomited and that he had gone to the hospital and been X-rayed and given medications. *Id*. at 55-56. However, Theiss saw no need to discuss the defendant's condition with medical personnel. *Id*. at 57-58. He simply asked the defendant how he was feeling. *Id*. at 58. The defendant stated that he was feeling "pretty good – better than before." *Id*. at 49-50. The defendant did not tell Theiss at any time during the interview that he was in discomfort or pain; did not hesitate to answer questions and had no difficulty answering them; and was coherent throughout the interview. *Id*. at 49, 51-52, 55-56. At the end of the interview the defendant asked if he could make a call, which he placed via his own cell phone before he was transported to county jail. *Id*. at 52.

During the interview Theiss asked the defendant what happened in the Alley. *See* Gov't Exh. 4

(LPD Offense/Incident Report Continuation dated 4/14/01). The defendant said that he and Bearfield got into a "discussion" outside of the Big D, that he saw Bearfield reach into his jacket and pull out what he believed was a gun and that the defendant pushed Bearfield's hand away when he started hearing gun shots. *See id*. When Theiss informed the defendant that Bearfield had sustained injuries, the defendant said they were self-inflicted. *See id*. The defendant said that Bearfield ran out toward Lisbon Street and he ran out toward Canal Street, where he was confronted by Rose. *See id*. When asked why he ran when ordered to stop, the defendant said that he was drinking in public and did not want to get caught. *See id*. He stated that he had a Heineken beer bottle in his hand and dropped it before he started running. *See id*.

Theiss drew a small picture depicting the Alley and asked the defendant to show him on the drawing where he was standing in relation to where Bearfield was standing. Transcript at 51; *see also* Gov't Exh. 5 (drawing by Theiss). The defendant indicated that he was standing with his back toward Canal Street, facing Bearfield, whose back was toward Lisbon Street. *See* Gov't Exh. 5. Theiss mentioned to the defendant that based on the evidence at the scene it appeared as though the shots had been fired from where the defendant was standing toward where Bearfield was standing. *See* Gov't Exh. 4. The defendant had no explanation for this. *See id*.

Following the interview Theiss went back to the Alley to look for the Heineken beer bottle that the defendant said he had thrown. Transcript at 52. He could not find it. *Id*. at 53. On April 18, 2001 the LPD arranged for the canal to be drained. *Id*. Divers searching the area found a .25-caliber handgun, which ballistics tests later indicated matched the bullet casings found in the Alley. *Id*. Nothing that the defendant said led the police to drain the canal in search of a weapon. *Id*. at 53-54.

II. Discussion

In his motion, the defendant seeks to suppress unidentified statements and tangible objects. *See*

generally Motion. The only tangible objects that appear to be in issue are the recovered gun and bullet casings. Theiss testified, without contradiction, that nothing the defendant said led police to drain the canal in search of a weapon. Nor is there any basis to believe otherwise; the defendant never told the LPD that he had possessed a weapon, let alone that he had discarded one. The seizure of the gun and bullet casings thus could not have been – as the defendant suggests – "the fruit of the poisonous tree." *See* Motion at [2]; *United States v. Eaton*, 890 F.2d 511, 513 (1st Cir. 1989) (Defendant did not "claim that the seizure of the gun was the 'fruit of the poisonous tree,' *i.e.*, that the seizure stemmed from his statement.") (citation omitted). Nor, in any event, does the defendant demonstrate that there was a "poisonous tree" from which a fruit could be harvested.

The defendant argues, in essence, that given his physical state (his consumption of alcohol, what he describes as a "beating" by the police and his illness necessitating hospitalization), he neither made "voluntary" statements nor a knowing and voluntary waiver of his *Miranda* rights. *See generally* Motion. These contentions implicate two related, but separate, constitutional protections.

Turning first to the voluntariness of the defendant's statements, an alleged confession "must be the product of a rational intellect and a free will." *United States v. Holmes*, 632 F.2d 167, 168 (1st Cir. 1980) (citation and internal quotation marks omitted). "[W]hen a defendant claims that his will was overborne by alcohol or drugs, the government has the burden of proving by a preponderance of evidence that his statement was voluntary." *Id*. at 169. While mental history or state is pertinent to voluntariness, "the precedents still require some degree of coercion or trickery by government agents to render a statement involuntary[.]" *United States v. Santos*, 131 F.3d 16, 19 (1st Cir. 1997); *see also Rice v. Cooper*, 148 F.3d 747, 750 (7th Cir. 1998) ("A confession or other admission is not deemed coerced or involuntary merely because it would not have been made had the defendant not been mentally defective or deranged. The relevant constitutional principles are aimed not at

protecting people from themselves but at curbing abusive practices by public officers.") (citation omitted).

The government fulfills its burden of demonstrating an absence of abusive or coercive practices on the part of the LPD. Rose administered one single "softening blow" solely to facilitate the arrest of the defendant; he did not "beat" the defendant or otherwise employ physical coercion aimed at extracting a confession. *See, e.g., United States v. Santiago Soto*, 871 F.2d 200, 202 (1st Cir. 1989) ("Santiago's claim that he was initially shoved by the inspectors and hit his head [when apprehended], if true, does not indicate that this was part of any general physical coercion by the postal inspectors."); *compare, e.g.*, *Holland v. McGinnis*, 963 F.2d 1044, 1050 (7th Cir. 1992) ("It is axiomatic that a confession extracted with violence or the threat of violence is involuntary.").

Moreover, the government adduced uncontroverted evidence that in the defendant's dealings with CMMC personnel and Theiss he appeared rational, responsive and coherent. He told Theiss that he was feeling "pretty good," and he was able to place a phone call from a cell phone following the interview. "[A] defendant can voluntarily waive his *Miranda* rights even when he is in the hospital, on medication, and in pain." *United States v. George*, 987 F.2d 1428, 1430 (9th Cir. 1993). In sum, the government meets its burden of demonstrating that – despite the defendant's intoxication, the blow administered by Rose and illness for which he received medical treatment on the night in question – his statements were voluntary.

Turning next to the defendant's *Miranda* waiver, the government (as it recognizes) again bears the burden of proof by a preponderance of the evidence that the waiver was voluntary, knowing and intelligent. *See* Government's Consolidated Objection to Defendant's Pretrial Motions ("Objection") (Docket No. 9) at 9 n.5; *see also Colorado v. Connelly*, 479 U.S. 157, 168 (1986). The government meets this burden. Theiss read the defendant his *Miranda* rights verbatim from a card; the defendant

responded that he understood each one. The defendant told Theiss that he felt "pretty good"; he had no difficulty understanding or responding to Theiss's questions; he did not state that he was in any pain or discomfort during the interview; and he was able to place a phone call from a cell phone immediately afterwards. The defendant made a voluntary, knowing and intelligent waiver of *Miranda* rights. *See, e.g., United States v. Lincoln*, 992 F.2d 356, 359 (D.C. Cir. 1993) (affirming trial court's finding that, despite defendant's inebriation, he "was not too intoxicated to be able to voluntarily waive his rights or to understand the *Miranda* warnings that he was given") (citation and internal quotation marks omitted).[2]

III. Conclusion

For the foregoing reasons, I recommend that the defendant's motion to suppress evidence be **DENIED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum,

[2] The government further argues that, to the extent the defendant made statements prior to the administration of *Miranda* warnings (*i.e.*, his statements to Rose in the Alley and his post-arrest response to the question, "Where's the gun?"), *Miranda* protections did not attach in that, as to the Alley statements, the defendant was not yet "in custody" and as to the response to the gun question, a public-safety exception obtains. Objection at 8-9. As to the Alley statements, I do not read the *Miranda* section of the defendant's motion to encompass them. He identifies only *Miranda* violations "following his arrest," arguing that "[t]here is no issue that Mr. Walters was in custody when he was being transported, under arrest, to the Lewiston Police Department." Motion at [2]. The Motion is the sole source of the defendant's legal arguments inasmuch as he submitted neither a reply nor a post-hearing brief nor made any oral argument following the close of the evidentiary hearing. The government concedes that the gun question was posed following the defendant's arrest. *See* Objection at 9. However, I find that the question, while not directed at the defendant, reflected a concern for the safety of the police and/or the public, the police having just apprehended a suspect who had fled from a dark alley following a suspected shooting. The defendant's response to this question thus is admissible under the public-safety exception to *Miranda* established in *New York v. Quarles*, 467 U.S. 649, 655-56 (1984). *See United States v. Shea*, 150 F.3d 44, 48 (1st Cir. 1998), *recognized as abrogated on other grounds, United States v. Mojica-Baez*, 229 F.3d 292 (1st Cir. 2000) (noting that gun question evidenced concern for public safety inasmuch as "the agent had just apprehended an individual suspected of attempting to commit a violent crime, armed bank robbery" and that the "arresting agent's question would have facilitated the securing of any weapons on Shea's person whether or not the agent intended to conduct a search of the suspect").

within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 7th day of September, 2001.

David M. Cohen
United States Magistrate Judge

CJACNS

U.S. District Court
District of Maine (Portland)

CRIMINAL DOCKET FOR CASE #: 01-CR-37-ALL

USA v. WALTERS Filed: 05/08/01
Dkt# in other court: None

Case Assigned to: JUDGE D. BROCK HORNBY

JOSHUA WALTERS (1)
aka
JOSHUA WALTER
defendant

HENRY W. GRIFFIN, ESQ.
[COR LD NTC cja]
37 PARK ST
SUITE 204
LEWISTON, ME 04240
795-9029

U. S. Attorneys:

GEORGE T. DILWORTH, AUSA
[COR LD NTC]
OFFICE OF THE U.S. ATTORNEY
P.O. BOX 9718
PORTLAND, ME 04104-5018
(207) 780-3257